



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 6453-99

22 October 1999

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: CAP [REDACTED] USMC [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 10 Jul 99 w/attachment
(2) HQMC PERB memo dtd 12 Oct 99 w/encl
(3) HQMC MMOA-4 memo dtd 7 Oct 99
(4) HQMC MMOA-4 memo dtd 20 Oct 99
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 28 March to 14 July 1997, a copy of which is at Tab A to enclosure (1). As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness report. Petitioner further requested removal of his failure of selection before the Fiscal Year (FY) 2000 Major Selection Board, so as to be considered by the selection board that is scheduled to convene on 26 October 1999 to consider officers of his category for promotion to the grade of major as an officer who has not failed of selection to that grade.

2. The Board, consisting of Messrs. Adams, Exnicios, and Goldsmith, reviewed Petitioner's allegations of error and injustice on 21 October 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (3), the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), the office having cognizance over the subject matter of Petitioner's request to

strike his failure of selection for promotion, issued their first of two advisory opinions concerning this request. Their initial opinion concluded that this request should be denied because Petitioner's record before the FY 2000 Major Selection Board included matters of competitive concern other than the later removed fitness report.

c. In correspondence attached as enclosure (4), MMOA-4 has commented to the effect that this advisory opinion supersedes their earlier opinion at enclosure (3), and that Petitioner "...should be afforded the benefit of the doubt and have his failure of selection removed."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (4), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:


a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

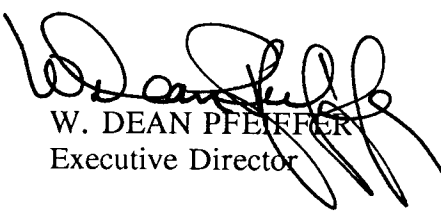
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

645349

IN REPLY REFER TO:
1610
MMER
12 Oct 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF CAPTAIN [REDACTED],
[REDACTED] USMC

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 6 Oct 99
(2) CMC Advisory Opinion 1600 MMOA-4 of 7 Oct 99
(3) Copy of CMC ltr 1610 MMER of 12 Oct 99

1. As evidenced by enclosure (1), PERB removed from Captain [REDACTED] official military record, the fitness report for the period 970328 to 970714 (TR).

2. We defer to BCNR on the issue of Captain [REDACTED] request for the removal of his failures of selection to the grade of Lieutenant Colonel. Enclosure (2) is furnished to assist in resolving that matter.

3. By enclosure (3), this Headquarters provided Captain [REDACTED] with a copy of the Advisory Opinion contained at enclosure (2).

[REDACTED]
[REDACTED]
Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps



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3280 RUSSELL ROAD
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645399

IN REPLY REFER TO:
1610
MMER/PERB

06 OCT 1998

From: Commandant of the Marine Corps
To: [REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report(s):

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
14 Jul 97	[REDACTED]	970328 to 970714 (TR)

2. There will be inserted in your Naval record a memorandum in place of the removed report. The memorandum will contain appropriate identifying data concerning the report and state that it has been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the report or the events which may have precipitated it, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a Naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that issue.

[REDACTED]
By direction



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

645399

IN REPLY REFER TO:

1600
MMOA-4
7 Oct 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Captain [REDACTED] USMC
of 6 Oct 99

1. Recommend disapproval of Captain [REDACTED] request for removal of his failure of selection.

2. Per the reference, we reviewed Captain [REDACTED] record and petition. He failed selection on the FY00 USMC Major Selection Board. Subsequently, he successfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Transfer fitness report of 970328 to 970714. He believes the presence of the report prevented his record from receiving a substantially complete and fair evaluation by the Board. Captain [REDACTED] requests removal of his failure of selection.

3. The petitioned report does present some competitive concern to the record and its removal enhances the competitiveness of the record, but not significantly. Further, Captain [REDACTED] record contains other areas of competitive concern that more than likely contributed to his failure of selection:

a. **Section B Marks.** The record reflects less competitive Section B marks in Administrative Duties, Tactical Handling, Initiative, Force, and Economy of Management.

b. **Section C Comments and Overall Value and Distribution.** Captain [REDACTED] Section C comments are replete with growing comments. His overall Value and Distribution marks as a captain are less competitive.

c. **Professional Military Education (PME).** Captain [REDACTED] has not completed the Warfighting Skills Program or Amphibious Warfare School as required by MCO P1553.4.

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
[REDACTED] USMC

4. In summary, the petitioned report does present some competitive concern to the record and its removal enhances the competitiveness of the record, but not significantly. However, Captain [REDACTED] record contains other areas of competitive concern that more than likely contributed to his failure of selection. Therefore, we recommend disapproval of his request for removal of his failure of selection.

5. Point of contact is Lieutenant Colonel [REDACTED],
[REDACTED]

[REDACTED]

Lieutenant Colonel, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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645349

IN REPLY REFER TO:

1600
MMOA-4
20 Oct 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
[REDACTED] SMC

Ref: (a) MMOA-4 Advisory Opinion in the case of Captain
[REDACTED] SMC of 7 Oct 99

(b) MMER Request for Advisory Opinion in the case of Captain
[REDACTED] SMC of 6 Oct 99

1. Recommend approval of Captain [REDACTED] request for removal of his failure of selection. This recommendation supersedes our opinion contained in reference (a) and gives him the benefit of the doubt.

2. Per reference (b), we reviewed Captain [REDACTED] record and petition. He failed selection on the FY00 USMC Major Selection Board. Subsequently, he successfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Transfer fitness report of 970328 to 970714. He believes the presence of the report prevented his record from receiving a substantially complete and fair evaluation by the Board. Captain [REDACTED] requests removal of his failure of selection.

3. In our opinion, the petitioned fitness report does present some jeopardy to the record and its removal enhances the competitiveness of the record. While we recognize the record contains other areas of competitive concern, we believe Captain [REDACTED] should be afforded the benefit of the doubt and have his failure of selection removed.

4. Point of contact is Lieutenant Colonel [REDACTED]
[REDACTED]

[REDACTED]
Lieutenant Colonel, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division